



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,752	02/06/2004	Michael A. Lewinski	034827-4001	4022
30542 7590 04/01/2008 FOLEY & LARDNER LLP P.O. BOX 80278 SAN DIEGO, CA 92138-0278				
EXAMINER				
HANDY, DWAYNE K				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
04/01/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,752

Applicant(s)

LEWINSKI ET AL.

Examiner

DWAYNE K. HANDY

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 9/16/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 6-9, 11, 12, 14, 17, 19, 20, 22, 25-28, 30, 31, 33, 36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Guirguis (6,309,632). Guirguis teaches a cytology slide preparation system. The system includes a filter assembly chamber (30) having a filter (35) for the collection and transfer of particulate matter. In use, sample material is drawn through the filter, the assembly is moved to a slide which receives both the particulate matter (columns 9-10, 13 and 14) and the filter (column 14, lines 9-10). The filter head is then dipped in a rinsing cup (column 14, lines 34-39) before receiving another filter for the next sample.

Inventorship

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

Art Unit: 1797

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2, 13, 21 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guirguis (6,309,362) in view of Lissot (4,796,197). Guirguis teaches every element of claims 2, 13, 21 and 32 except for the wiping step. Lissot teaches an automated analysis apparatus. The device is best shown in Figure 1. It includes needle elements (28) for adding and removing fluids from test tubes as well as washing and wiping stations (20, 22) for washing and wiping the needles. It would have been

Art Unit: 1797

obvious to one of ordinary skill in the art to add the wiping station from Lissot with the system of Guirguis. Guirguis teaches dipping the filter head in cleaning solution but does not teach drying the head. One would add the wiping station to wipe and dry the filter head after washing as in Lissot.

6. Claims 4, 5, 15, 16, 23, 24, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guirguis (6,309,362) in view of Dunfee (7,186,378). Guirguis teaches every element of claims 4, 5, 15, 16, 23, 24, 34 and 35 except for the disinfecting solution of bleach. Dunfee teaches a liquid sampling probe and cleaning system. The system includes a cleaning station (90) having a bleach-like cleansing solution for washing the probe (Figure 10 – column 10, lines 14, 34). It would have been obvious to one of ordinary skill in the art to combine the bleach-like solution from Dunfee with the system and method of Guirguis. Guirguis mentions the use of a cleaning solution but does not specify that it disinfects. One would use a bleach-like solution to provide disinfection during cleaning.

7. Claims 10, 18, 29 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guirguis (6,309,362) in view of Beecham (5,876,926). Guirguis teaches every element of claims 10, 18, 29 and 37 except for nucleic acid. Beecham teaches a system for collecting medical data. The method includes collecting a sample and then testing the sample for genetic markers for cancer. It would have been obvious to one of ordinary skill in the art to combine the genetic testing step to the

Art Unit: 1797

method of Guirguis. Guirguis teaches examination of samples for cancer (columns 5 and 18). One would add the genetic testing from Beecham to provide additional cancer testing.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Maier et al. (2003/0103872), Sakurai et al. (2004/0122222), Kath et al. (5,945,070) and Smith (7,318,911) teach dispensing or collecting devices having a filter. Sisti et al. (4,343,766), Mimura et al. (4,543,238), Sasao (5,279,794), Mahaffey et al. (5,506,142), Schalkowsky et al. (5,547, 872), Everett (7,326,385) and Evans et al. (20050112783) teach dispensing or collecting devices having a washing or cleaning element.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DWAYNE K. HANDY whose telephone number is (571)272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DKH
March 30, 2008

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797